

to the foot. Competent witnesses said that the grade of this sidewalk from its westerly side towards the roadway was greater at the time of the accident than from the standpoint of safety it should have been; and that there were indications that it was then greater than when the sidewalk was constructed—that the sidewalk might have sunk. But there was positive evidence that its condition in that respect was then just as it had been for months prior to the accident. A still more serious condition was that of the broken and defective concreting of the sidewalk where the plaintiff fell. For a length of six feet or thereabouts by a width of several inches along its outer edge the concrete had been badly broken and had fallen away. This had continued from the previous summer without repair. This particular place was characterised by witnesses as dangerous, both on account of this defect and of the unusual grade, especially at a time when there was ice. The unusual grade and the broken and defective condition of the sidewalk were apparent to passers-by, and there was no effort or attempt to make repairs or to provide against or minimise the risk consequent upon those conditions. The plaintiff was going south along the westerly sidewalk when she fell at the broken part referred to, and was seriously injured.

The learned Judge had no hesitation in finding, having regard to the circumstances then existing and the length of time the sidewalk had been permitted to continue in the condition in which it was on the 20th February, that the defendants were guilty of gross negligence; that that negligence was the cause of the plaintiff's injuries; and that the plaintiff exercised reasonable care and was not negligent.

The notice of injury served by the plaintiff before action, pursuant to sec. 460 (4), was sufficient.

The plaintiff's damages were assessed at \$3,500, and judgment for that sum and costs was directed to be entered against the defendants.

SUTHERLAND, J.

JULY 24TH, 1919.

BOYER BROTHERS v. DORAN & DEVLIN.

Contract—Building of Houses—Provision for Termination upon Notice—Right Exercised in Good Faith and on Reasonable Grounds—Estoppel—Res Adjudicata—Claim which might and should have been Asserted in Former Action.

Action for damages for the breach of a contract.

The defendants had contracted with the Canadian Government Railways to erect certain section-houses along their lines.